

Johnson, Becky A. (ECY)

From: Wells, Matthew (SEA) [mattheww@prestongates.com]
Sent: Wednesday, October 11, 2006 5:30 AM
To: Markham, Barbara (ATG)
Cc: Barwin, Robert F. (ECY); Martin, Larry C.; Brown, Dave; Reichman, Alan (ATG)
Subject: Acquavella Final Decree -- permit carve out language
Attachments: Decree language.doc

Barbara,

Attached is the proposed language for the final decree that we discussed last week to address permits and similar water use authorizations that are under Ecology's administrative jurisdiction and therefore should not be terminated or precluded by the final decree. I looked back at the language used by the Court in the initial YTID report of the Court, and in the referee's report regarding City of Ellensburg (Reecer Creek sub-basin I think), both of which looked at permits and concluded that they were outside the ambit of the adjudication and that their "final resolution" rested with the Department.

Because of the interest in finality and certainty in a final decree, I would recommend that we use the exclusive list version in the attached if at all possible, rather than the general description and inclusive list. However, you are in a much better position than I am to know whether the department can identify with particularity all of the permits or other use authorizations in the order or whether instead you have to use the general language.

I am copying Bob Barwin and Alan Reichman on this because they have both been involved with the Department's actions regarding both of the City of Yakima rights identified in the attached for many many years. I am also copying Larry Martin because of the possibility that YTID's reservoir permit is still in permit status and so might need to be included in this list.

Turns out I will be able to make it over to Yakima for the hearing tomorrow, and I look forward to seeing you there.

Given the early stage of the discussion with the Court on the final decree, I would suggest that we discuss this topic somewhat generically with the Court tomorrow, but not float specific language until the Department and perhaps other interested parties have had more of a chance to review and discuss. If you'd like to discuss more before tomorrow, the best time to catch me today will be between 11 and 1.

Thanks much Barbara. See you tomorrow.

Matt

<<Decree language.doc>>

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Exclusive list version (recommended):

This adjudication is a statutory quiet title action for all surface water rights in the Yakima River Basin existing as of the date of this Final Decree, and no valid surface water rights exist in the Yakima River Basin except as set forth in this Final Decree. The term “surface water rights in the Yakima River Basin existing as of the date of this Final Decree” does not include the surface water permits or other use authorizations that are identified below, the final resolution of which is under the administrative jurisdiction of the Department of Ecology as of the date of this Final Decree. Accordingly, nothing in the foregoing shall prevent or prohibit the beneficial use of water under, or the administrative recognition of, the following surface water permits or other use authorizations the final resolution of which is under the administrative jurisdiction of the Department of Ecology: City of Yakima surface water permit # S4-01141P(B); City of Yakima change authorization for groundwater certificate # 938-D; Yakima-Tieton Irrigation District reservoir permit # R4-26540; and _____.

Generic statement with inclusive list version:

This adjudication is a statutory quiet title action for all surface water rights in the Yakima River Basin existing as of the date of this Final Decree, and no valid surface water rights exist in the Yakima River Basin except as set forth in this Final Decree. The term “surface water rights in the Yakima River Basin existing as of the date of this Final Decree” does not include surface water permits or other use authorizations the final resolution of which is under the administrative jurisdiction of the Department of Ecology as of the date of this Final Decree. Accordingly, nothing in the foregoing shall prevent or prohibit the beneficial use of water under, or the administrative recognition of, surface water permits or other use authorizations the final resolution of which is under the administrative jurisdiction of the Department of Ecology as of the date of this Final Decree. These include the following: City of Yakima surface water permit # S4-01141P(B); City of Yakima change authorization for groundwater certificate # 938-D; Yakima-Tieton Irrigation District reservoir permit # R4-26540; and _____.